DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

FINAL STATEMENT OF REASONS

AMEND ARTICLE 1, DEFINITIONS AND GENERAL PROVISIONS, SECTIONS 1200; ARTICLE 6.5, CARRIER IDENTIFICATION NUMBERS, SECTIONS 1235.1, 1235.2, AND 1235.4; AND ARTICLE 8, SECTION 1256, IDENTIFICATION
ADOPT NEW SECTION 1235.7, LEASED VEHICLES

MOTOR CARRIER SAFETY
CARRIER IDENTIFICATION
(CHP-R-09-15)

EXISTING REGULATIONS AND AMENDMENTS

California Vehicle Code (CVC) Section 34501 requires the Department of the California Highway Patrol (CHP) to adopt reasonable rules and regulations which, in the judgment of the Department, are designed to promote the safe operation of vehicles described in CVC Section 34500. Those regulations are contained in Title 13, California Code of Regulations (13 CCR).

California Vehicle Code Section 34507.5 requires certain persons, primarily motor carriers, to obtain a California Carrier Identification number, identified in regulation as a "CA number," from the CHP, and with some exceptions, to display that number on both sides of the vehicles mentioned above. During 2001/2002, in order to provide greater clarity to the enabling statute, the CHP adopted regulations relating to the assignment of carrier identification numbers. Now, however, the CHP believes that recent developments indicate that all persons who are subject to CVC Section 34507.5, should be provided greater clarity with regard to whom the CA number should be assigned. That clarity is provided through formal adoption of regulations in 13 CCR.

Background

The CHP promotes the safe operation of the vehicles listed in CVC Section 34500 by various means, one of which is by collecting information relating to the safety performance of the motor carriers who operate those vehicles. Since the development of the Management Information System of Terminal Records (MISTER) in 1986, that information has been stored in an automated record system, which has been used by the CHP primarily as an internal tool to manage its motor carrier inspection workload.

To ensure that information collected is attributed to the correct motor carrier in the records of the CHP, each record is identified with a CA number, and it is this CA number that CVC Section 34507.5 requires certain persons to obtain. While historically, the CA numbers were merely the

means by which those records were identified; today, the CA number is far more relevant in identifying the responsible motor carrier entity.

For years, CA numbers were assigned without specific written rules and without a clear objective of identifying the person responsible for the actual motor carrier operations. Conversely, multiple motor carriers have sometimes shared the same CA number due to a lack of recognition in the CHP's records of their existence as separate legal entities. These errors typically occurred because of confusion with business relationships; such as the relationship between motor carriers and independent drivers contracted to drive vehicles leased by the motor carrier. These drivers (independent contractors) were thought to be independent entities, when in fact they were private contractors operating vehicles leased and operated as part of a larger motor carrier operation. In other cases, two or more separate companies were mistakenly treated as a single company because of their close business relationship, when in fact they were separate legal entities.

This matter was further complicated in 1997, when the Motor Carriers of Property Permit Act (the Act) was signed into law, which created a new class of motor carrier, the "Motor Carrier of Property" (MCP). Among other things, the Act required all MCPs to obtain a CA number from the CHP, and to register it with the Department of Motor Vehicles (DMV), the agency assigned responsibility for issuing the permits created by the Act.

While, most *MCPs*, as defined in CVC Section 34601, are also *motor carriers* as defined in CVC Section 408, and were therefore already subject to CVC Section 34507.5; due to the separate definitions of those terms, there are some MCPs who are *not* also motor carriers pursuant to CVC Section 408. The motor carrier definitions describe two groups that largely overlap one another, but there are many persons who fall into only one of the groups.

This means that there are some persons who are subject to the requirement in CVC Section 34507.5 to obtain and display a CA number solely because they are MCPs as defined in CVC Section 34601, even though they are not motor carriers as defined in CVC Section 408. Those persons must obtain a permit from the DMV to operate their vehicles on the highway, but because they are not also *motor carriers*, they are not subject to the motor carrier safety regulations of the CHP. For these reasons, among others, it is more important than ever to ensure greater clarity is added to the regulations in order to more clearly identify the motor carrier, whether defined by CVC Section 408, CVC Section 34601, or both.

An applicant for a MCP permit obtains the permit to operate certain vehicles on the highway by submitting an application and fee to the DMV and providing proof of adequate insurance as part of the process. The permit represents a privilege that can be suspended or revoked by the DMV. Therefore, the CA number assigned by the CHP now has a dual role. First, it is an identification number that does not entitle the holder to any form of authority or permit to operate. Second, it is used as the unique identifier for an MCP permit in order to reduce the identifying numbers assigned to the motor carrier industry, and that permit *does* entitle its holder to operate certain vehicles on California highways. In this second role, the CA number represents records that could become exhibits in proceedings to suspend or revoke the MCP permits of unsafe carriers, or of those that consistently fail to comply with applicable laws. Therefore, as already indicated,

it is now more important than ever that the regulations regarding CA numbers be further clarified, with special emphasis on preventing duplication, sharing, or transferring of CA numbers when motor carriers enter into certain business relationships with other motor carriers, or independent contractors. The CA number is no longer simply a database key to a motor carrier's safety record. Now it can represent an MCP's privilege to operate on the highway.

As the CHP works to develop a means by which the motor carrier industry can review certain aspects of their own motor carrier records through use of the internet, it becomes increasingly more important to ensure the records are not only accurate, but that they identify the correct business entity. Also, as this system is currently used by CHP enforcement personnel, as well as other law enforcement and regulatory bodies, it is equally important that the number displayed on each vehicle accurately identifies the motor carrier responsible for the current operation of that vehicle.

PURPOSE OF THIS PROPOSED REGULATORY ACTION

The CHP has concluded through numerous discussions with motor carrier industry groups over the past several years that a great degree of confusion continues to exist with regard to identifying the motor carrier responsible for the day-to-day operations of vehicles which are leased by those motor carriers, with or without drivers. While the identifiable majority of this type of arrangement operates in interstate commerce, the CHP has never adopted the federal rules which govern this type of business arrangement.

As early as the 1950s, the United States Department of Transportation (US DOT) recognized the need to provide clarity with respect to identifying the motor carrier when leased vehicles are used to increase or decrease a fleet as necessary to accommodate varying workloads. While this was, and still is, relevant with most of the interstate over-the-road operations, it is becoming even more relevant to our global economy with California's numerous ocean going marine terminals. Fluctuations in daily port traffic lead to varying equipment needs, usually addressed through leasing of equipment rather than through vehicle purchases, which offer limited flexibility in overhead costs.

As a result of this need for varying fleet sizes, the Interstate Commerce Commission (ICC) (succeeded by the Federal Motor Carrier Safety Administration [FMCSA]), an administrative entity under the US DOT, realized two problems existed. First, the overlying motor carriers where using vehicles as part of their fleet when in fact those vehicles actually belonged to other motor carriers; and secondly, when the overlying motor carrier did lease a vehicle, the terms of those written leases were, at best obscure, generally resulting in the small independent operators being taken advantage of by the larger, more business savvy, overlying motor carrier. These problems have led to several regulatory actions by the ICC and the FMCSA. These actions are now contained in Title 49, Code of Federal Regulations (49 CFR), Part 376.

In order to provide a consistent identification of interstate motor carriers under both state and federal rules, it was necessary that the CHP adopt rules which are consistent with existing federal rules. This does not necessarily create new rules for interstate motor carriers, because they are

already subject to those rules, but it does permit the CHP to both identify interstate motor carriers in the same manner as the FMCSA, and to enforce substantially the same requirements on those motor carriers as our federal counterpart. This will permit the CHP to move one step closer in providing a seamless enforcement of regulations for motor carriers operating in an interstate mode within the boundaries of California.

The CHP also adopts consistent leasing rules for intrastate MCPs. Those rules which apply to intrastate motor carriers will need to be modeled on the interstate motor carrier rules, but include the necessary changes to accommodate those subtle differences between the FMCSA's motor carrier registration and operating authorities, and the DMV's MCP permit.

The adopted rules will conspicuously omit the for-hire passenger transportation industry as well as Household Goods (HHG) carriers as they operate under a separate identification number issued by the California Public Utilities Commission and specific rules adopted by the same agency.

SECTION BY SECTION OVERVIEW

The CHP amends regulations in 13 CCR, Chapter 6.5 "Motor Carrier Safety" – Article 1, Definitions and General Provisions, Section 1200; Article 6.5, Carrier Identification Numbers; Section 1235.1, Application for Carrier Identification Number; Section 1235.2, Motor Carrier Safety Records of the Department; Section 1235.4, Identification Numbers Nontransferable; and Section 1256, Identification; and adopts new Section 1235.7, Leased Vehicles.

Chapter 6.5 Motor Carrier Safety.

Article 1, Definitions and General Provisions.

Title 13, California Code of Regulations 1200, Scope.

Subsection (b) is adopte to reflect recent changes to legislation. Through Assembly Bill 3011 (2006) farm labor vehicles (FLV) were added to CVC Section 34500. Because of this legislative amendment, it is no longer necessary to separately identify FLVs from other vehicles listed in CVC Section 34500.

Article 6.5, Carrier Identification Numbers.

Title 13, California Code of Regulations 1235.1, Application For Carrier Identification Number.

Subsection (d) is adopted in order to permit the issuance of additional numbers which may be used for the purpose of tracking motor carriers through other databases. One such use of this proposal would be the issuance and recording of numbers issued by the US DOT for the purpose of accessing the federal Motor Carrier Management Information System (MCMIS) database and tracking the safety records of a motor carrier relative to other motor carriers. This is currently not

possible through Management Information System of Terminal Evaluation Records. Not only would this permit comparison of safety records; but it would also permit those motor carriers with exceptional safety records to be readily identified.

Subsection (e) is adopted to update the revision date of the CHP 362, Motor Carrier Profile, to reflect the current January 2007 revision date. Several non-substantive changes were made to add clarity to the form. On page two and page four of the application, the abbreviation "MCP" was spelled out in order to more accurately read "Motor Carrier of Property." Additionally, on page three, Motor Carrier Safety Unit addresses and telephone numbers were updated to reflect current information.

Title 13, California Code of Regulations 1235.2, Motor Carrier Safety Records of the Department.

Subsection (a) is adopted to repeal the statement indicating all of the information in the record system is public information. While this is true in most instances, certain data (i.e., drivers' license numbers in conjunction with the driver's name and employer identification numbers) is deemed to be confidential in nature. For this reason, the statement is not wholly accurate. This does not preclude the public from obtaining records stored in the system; the majority of the information is available, but certain confidential information will be redacted as required by law.

Subsection (b)(14) is Adopted to update a reference to additional tracking numbers as part of the information which may be part of a carrier record. This will authorize the Department to use such identifiers as US DOT numbers to better assist the Department in identifying motor carriers, and tracking the safety record of those motor carriers.

Subsection (b)(22) is added to specify that Carrier records may contain such information as the current safety compliance rating assigned by the CHP to that motor carrier and the date of the rating assignment. CVC, Section 34520, mandates the CHP perform inspections of motor carriers for the purpose of evaluating compliance with the federal Controlled Substances and Alcohol Testing regulations. This amendment will permit the CHP to track those rating assigned to motor carriers and monitor the resulting compliance history.

Subsection (c)(10) is added to specify the number of vehicles assigned to each terminal operated by a motor carrier subject to the Biennial Inspection of Terminals program identified in CVC Section 34501.12. Because the number of vehicles assigned to a particular terminal will determine the fees assessed to terminal, it is important to associate a vehicle count with that same terminal.

Title 13, California Code of Regulaltions 1235.4, Identification Numbers, Nontransferable.

Subsection (b) is adopted to add language which will clarify the intent of the subsection to permit the Department to delete a CA number which has been inadvertently issued to a motor carrier as a result of the motor carrier's attempt to circumvent or thwart an action against that motor carrier. It has been a longstanding practice of the regulated community to simply apply for

a new CA number and continue operations as a new motor carrier in order to avoid a suspension action against the original motor carrier entity.

While the subsection was initially proposed in an effort to prevent this type of circumvention, some question has existed as to whether the Department is authorized to delete a CA number once it has been issued. This amendment will clarify that matter.

Title 13, California Code of Regulations 1235.7, Leased Vehicles.

Subsection (a) is adopted to establish the applicability of the leasing requirements proposed by this section. Specifically, the regulations adopted in this section are intended to apply to intrastate motor carriers unless a subsection indicates a rule is applicable to interstate motor carriers also. This is the case in subsections (h), (i), and (k).

Subsection (b) is adopted to define certain terms unique to vehicle leases. In order to provide clarity to the adopted regulations, terms which are generally associated with interstate commerce are defined for the purpose of intrastate commerce. This is intended to ensure all persons affected by the regulations understand the terms used in this section, in the same way.

Subsection (b)(5), defining the term "Escrow Funds," was deleted from the proposed text as it was no longer necessary following the deletion of subsection (d)(11), *Escrow Funds*. Subsection (d)(11) was the only subsection which referenced the term. Consequently, subsections (b)(6)(11) were renumbered to reflect the deletion of subsections (b)(5).

Subsection (c) is adopted to specify general leasing requirements for the purpose of establishing criteria to permit an authorized carrier to use equipment it does not own. California Vehicle Code Section 408, and Section 1201 of this code, define a motor carrier (authorized carrier) as, among other conditions; a person who leases vehicles listed in CVC Section 34500. The purpose of this amendment is to specify the conditions which constitute a lease under the motor carrier definition.

Subsection (c) is also intended to specify specific terms for a written lease, the transfer of equipment, and vehicle identification. These requirements are necessary in order to ensure adequate enforceability of the regulations. Quite often, minus these requirements, lease agreements are designed to keep distance between the authorized carrier and the vehicle being leased. The terms required by this subsection and subsection (d) will ensure adequate disclosure and create a legal bond between the authorized carrier and the vehicle being leased, permitting law enforcement to place responsibility with the appropriate person.

Lastly, subsection (c) inadvertently contained two subsections with like numerical references. The second reference to subsection (3) was renumbered subsection (4) to alleviate the duplication.

Subsection (c)(1) is adopted to ensure no misunderstanding existed as to the need for a written lease containing certain content identified in subsection (d). As with the interstate requirements

contained in 49 CFR, Part 376, it is a common belief in the industry that no actual lease is required. This subsection expressly requires a specific written document executed in order to satisfy the lease requirements contained in this subsection, and subsection (d). By adhering to a common set of rules; all parties to the lease have access to the same information and the ability to come to the same understanding of the levels of responsibility expected of each of those parties.

Subsection (c)(2) is adopted to require documentation as to the specific identity of the commercial motor vehicle being leased. As with the agreement in subsection (c)(1), common industry beliefs are that the leasing requirements identified in this section are not necessarily a vehicle lease, but rather a leasing of "services" between two motor carriers. This subsection is necessary to identify each particular vehicle to be covered under the lease and to ensure no argument exists as to the purpose of the agreement. Clearly, by the nature of this subsection, a new receipt will be required for each vehicle covered under a particular lease.

Subsection (c)(3) is adopted to require an authorized carrier leasing a vehicle to identify that vehicle as its own. This subsection will require leased vehicles to be marked with the name (or trademark) and identification number of the authorized carrier leasing and subsequently operating that vehicle.

Also, this subsection will require the authorized carrier operating the commercial motor vehicle to place a statement in the vehicle (unless a copy of the lease is carried in the vehicle) specifying certain information, including the date and length of the lease. This will assist law enforcement in properly identifying the actual authorized carrier responsible for the operation of the vehicle.

Identification of the authorized carrier is critical in the safe operation of any commercial motor vehicle. This provision will ensure highway safety through holding the appropriate person responsible for the actions of the driver and the condition of the equipment. Often, during an on-highway enforcement stop, the name on the side of the vehicle and any agreements carried in the vehicle are the only tools an officer will have in determining the responsible person.

Subsection (c)(4) is adopted to ensure the correct authorized carrier is identified with the motor vehicle being operated. Subsection (c)(4) requires documentation containing the name and address of the owner of the equipment, the point of origin, the time and date of departure, and the point of final destination be carried in the vehicle during its operation. This requirement also exists in the federal regulation and has often been the nexus by which law enforcement has associated a vehicle with the authorized carrier.

Lastly, subsection (c)(4) also contains a requirement to retain records required by subsection (c) to be retained by the authorized carrier (lessee) for a period of six months after the termination of the lease. This retention period is specific to the lease itself, the receipts for equipment, the statement, and the records of equipment, required by subsection (c). The records required by Subsection (d) are already subject to the retention requirements of 13 CCR, Section 1234 as they fall within the scope of "Supporting Documents", defined in 13 CCR, Section 1201, and need no further retention requirement.

All of these documents are necessary in determining who was responsible for the vehicle, and the driver, at any given time. During the course of an enforcement inspection, it is often difficult to determine who was operating the vehicle at a particular time, minus anticipatable proof such as the documents listed in this subsection.

Subsection (c)(4)(E) was amended after further review; the reference to the subsection was amended to include a more specific reference to "subsection (c)." With only the reference to "this subsection" the CHP recognized that potential existed to confuse the level of subsection intended in the retention requirement.

Subsection (d) is adopted for the purpose of listing specific requirements which constitute a written lease agreement required by subsection (c). These written requirements are not intended to place the CHP in a position of dictating conditions which already exist elsewhere in the business world for the purpose of creating binding leasing requirements, but are intended to clearly identify an authorized carrier and ensure motor carrier regulations are applied to the correct person.

For a number of years authorized carriers operating under the interstate motor carrier safety regulations have been subject to leasing regulations consistent with the regulations proposed by these amendments. However, those rules have been unenforceable by the CHP as those rules were not previously adopted by the state. This adoption will permit the enforcement of specific provisions for intrastate authorized carriers using equipment they do not own. These provisions are consistent with provisions listed in the federal requirements, but not identical for reasons listed elsewhere in this statement.

Subsection (d)(1) is adopted to require the parties to the lease agreement to sign that agreement. This subsection will help ensure the validity of the agreement and better enable law enforcement to make certain presumptions as to the identity of the authorized carrier.

Subsection (d)(2) is adopted to require the lease agreement to identify a specific period of time for which the lease agreement is valid. It is not uncommon for a vehicle owner to bounce from one authorized carrier to another all the while denying the duration of any agreement which may be in place. On the other hand, it is common to have an authorized carrier claim a vehicle that is (or was) not under the control of that carrier at the time an enforcement action was taken, or an incident occurred. This provision is necessary in identifying who was the authorized carrier responsible for the vehicle at a given time.

In order to accommodate those authorized carriers who do not wish to lease a vehicle for an extended period of time, subsection (d)(2) also allows for a set of circumstances surrounding the leasing of the vehicle. For instance, should an authorized carrier only need a vehicle for a particular set of circumstances, the authorized carrier may indicate those circumstances rather than a set period of time. This is not to say the authorized carrier can prescribe a string of transportation conditions, but rather a specific trip involving a particular activity. Subsequent conditions would require an additional lease agreement providing for that condition, or set of circumstances.

Subsection (d)(3) is adopted to clarify the relationship between the authorized carrier and the vehicle being leased. It is the experience of the CHP; often a lease agreement, under the federal requirements, will improperly contain language which places the authorized carrier at arms length from the motor vehicle and the responsibilities surrounding that vehicle. Often, lease agreements will go so far as to indicate the authorized carrier is *not* responsible for the vehicles it operates. This is contrary to the language in the federal regulations and will also be contrary to the language and intent of the state regulations adopted in this rulemaking action.

The intent of a lease agreement is to articulate the transfer of equipment from the owner to an authorized carrier. Once leased, the authorized carrier does not have the luxury of handing the owner the responsibility for the vehicle's operation while enjoying the benefits of its operation. Once leased, the CHP will hold the authorized carrier responsible for the exclusive possession, control, and use of the vehicle, as the regulations intend, for the duration of the lease.

This is not to say the regulations are intended to distribute financial responsibility for maintenance, fuel, or other costs associated with the vehicle. As indicated above, subsection (d) is only intended to transfer the vehicle and the overriding responsibility for the vehicle. This is consistent with the definition of "motor carrier" contained in CVC, Section 408 and 13 CCR, Section 1201.

However, it is important to indicate, the lease agreement requirements contained in subsections (b) and (c) are not intended to affect the relationship between the owner or driver and the authorized carrier. The regulations are intentionally silent as to the type of business relationship between the driver and the authorized carrier and in no way does the CHP intend to prescribe that relationship. Without regard to the business relationship, the definition of "driver" contained in 13 CCR, Section 1201, clearly places that individual driver under the direction of the authorized carrier operating the vehicle. Those matters related to motor carrier safety are the full extent of CHP interest in this relationship.

Subsection (d)(4) is adopted to ensure the validity of the lease. In order to ensure the vehicle is adequately maintained, it is important to reveal the authorized carriers responsibility for compensating the owner for the vehicle's use and depreciation. Often, lease agreements require the owner of the vehicle to perform all required maintenance on the vehicle. Without a clear understanding of the terms of compensation, less business savvy owners are sometimes subject to predatory practices of larger companies with the ability to confuse and manipulate the vehicle owner into a contract where the terms of compensation are unclear and the compensation itself is inadequate to perform the necessary maintenance and to make necessary repairs in order to keep the vehicle in a safe operating condition.

While some may argue this type of regulatory action is an attempt to regulate economics, that argument can be refuted by the lack of any requirement for specifics regarding the actual amount of compensation, or the terms by which compensation is determined. The CHP has no interest in the amount of payment, or terms of the compensation, only that the compensation is clear, permitting the owner to make an informed decision as to the ability to adequately maintain the

vehicle and provide necessary maintenance during and after the leasing period.

Subsection (d)(5) is adopted in order to ensure all parties to the lease understand who will be responsible for removal of the vehicle identification (CA/USDOT number and name, or trademark) upon termination of the lease. California Vehicle Code Section 27900 requires the name, or trademark be removed, or covered over when the vehicle is no longer to be operated under the same operating authority. Likewise, CVC Section 34507.5, requires the identification number be removed prior to the transfer of the vehicle. This subsection is intended to stipulate who will perform the necessary removal of markings.

Following review by the CHP, several elements of subsection (d)(5) were removed from the original proposal as they were determined to be overly burdensome for the affected industry. While these elements have merit in ensuring adequate disclosure of the terms of the lease, the CHP believes it is most important to provide only those elements necessary to ensure the authorized carrier is adequately identified and the vehicle is safely maintained.

For this reason, the CHP is deleting the following items from subsection (d)(5): receipt upon termination of the lease, responsibility for certain costs, responsibility for loading and unloading property, risks and costs for certain fines, and cost or reimbursements for base-plates associated with the vehicle.

Subsection (d)(6) has been deleted from the original proposal. It is the belief of the CHP that the importance of payment rests with the amount of compensation to be received, not the terms under which the payments should be made. While it could be argued this is an important element of compensation; it could also be argued that the importance is in the owner being provided with the information necessary to make an informed business decision which could result on a direct impact on public safety if the information was not available. For this reason, subsection (d)(6) is being deleted from the proposed regulatory text.

Subsection (7) was renumbered subsection (6). The new subsection (6) is intended to provide full disclosure between the authorized carrier and the owner. When the owner's revenue is based on a percentage of the gross revenue for a shipment, the lease must specify that the authorized carrier will give the owner, before or at the time of settlement, a copy of the rated freight bill or a computer–generated document containing the same information. This provision is not intended to regulate the compensation agreement between the two parties to the agreement, but rather to ensure the owner of the vehicle can verify the amount being compensated is accurate. The CHP believes this element is necessary in order to provide legitimacy to subsection (d)(4). The provision to disclose compensation is only valid if the ability to verify the level of compensation also exists.

Additionally, language was deleted from the current subsection (d)(6) which required disclosure of the documents used to calculate the rates and tariffs charged by the authorized carrier. The CHP could not state with all certainty that disclosure of these documents, when not directly related to compensation, played a role in public safety.

Subsection (d)(7) (subsection [d][8] has been renumbered [d][7]) is intended to disclose any cost which may be charged back and deducted from the compensation due the owner. As already indicated, it is necessary to public safety for the owner to fully understand any element which may affect the revenue derived through the agreement, and therefore, affect their ability to adequately maintain and repair the leased vehicle either during or immediately following the lease of the vehicle.

As with previous subsection (d)(6), previous subsection (9) is deleted because it is not wholly relevant to ensuring the safe operation of the motor vehicle identified by the agreement. Previous subsection (d)(9) contained language which specified that the owner is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement. The subsection went on to require disclosure of any additional purchase or rental agreements which might result in any further deductions from the owner's compensation. The CHP does not see the need for duplicating agreements held outside of the lease agreement regulated by this rulemaking. Any additional agreements are the responsibility of the parties involved, and are not germane to the safe operation of the vehicle.

Subsection (d)(8) (previously numbered subsection [d][10]) is intended to document the requirement for the authorized carrier to comply with CVC Section 34631.5, providing the levels of combined single-limit liability insurance required by that section. The subsection goes on to require disclosure of any additional insurance coverage which may be obtained through the authorized carrier and disclose any charge-back fees resulting from the acquisition of the coverage. Lastly, the subsection requires the authorized carrier to provide a copy of those policies to the owner.

The subsection also requires disclosure that the authorized carrier must provide the owner with a written explanation and itemization of any deductions for cargo or property damage made from any compensation of money owed to the owner. The written explanation and itemization must be delivered to the owner before any deductions are made.

Again, this subsection, in its entirety, is intended to provide full disclosure and to ensure the authorized carrier and the owner have adequate information to make a business decision which will result in the leased vehicle being properly maintained or repaired.

Subsection (d)(9) (previously numbered Subsection [d][12]) requires three copies of the lease agreement be signed. One copy provided to the authorized carrier, one to the owner, and one kept in the vehicle identified in the lease. This is a necessary element of the agreement, permitting law enforcement officials to use the agreement in order to identify which party is the authorized carrier responsible for the operation of the vehicle. Often the driver of the vehicle (generally the owner) is unclear as to the circumstances and the consequences of leasing a vehicle to an authorized carrier.

A common misunderstanding is that the lease is a transfer of the operating authority rather than a transfer of the vehicle. This generally results in the driver playing the part of the authorized carrier and accepting responsibility for the vehicle rather than acknowledging that responsibility

rests with the authorized carrier, the person actually responsible for the operation.

The lease agreement plays a significant role in law enforcement's ability to distinguish which part is responsible for the vehicle at the time of the enforcement action. Minus this agreement being available for review, law enforcement is often left making a decision between the name(s) displayed on the side of the vehicle and discussions with a driver who may or may not understand the circumstances under which the vehicle is being operated.

Subsection (d)(11) was deleted for the same reasons as subsection (d)(9). The use of an escrow fund is not of interest to the CHP. Escrow funds are already provided for in Division 6 of the California Financial Code (CFC), commencing with Section 17000. The CHP does not find it necessary to further regulate this provision of the CFC.

Subsection (d)(10) is deleted from the proposed text.

Subsection (d)(11) is deleted from the proposed text.

Subsection (d)(12) is renumbered subsection (d)(9).

Subsection (d)(13) is deleted as being inapplicable to intrastate transportation. While the federal regulations specifically address the use of agents by authorized carriers, the state rules do not provide for the same relationship between authorized carriers and persons providing transportation services on behalf of those authorized carriers. For this reason, the subsection is unnecessary and has been deleted from this rulemaking proposal.

Subsection (e) adopts certain exceptions to the requirements of this proposal. Except for the vehicle marking requirements, operations involving equipment leased, without drivers, from a person who is principally engaged in the leasing of vehicles, are exempted from the remainder of the vehicle leasing requirements during the course of the exempted activity. Additionally, operations which involve trailers not leased from the same person as the power unit are also exempted by this subsection. Generally, companies principally engaged in the leasing of vehicles have mechanisms in place to provide for a lawful transfer of the vehicle from the leasing company to the authorized carrier; however, this exemption does not relieve the motor carrier related responsibilities and the authorized carrier remains responsible for the safe operation of that vehicle while under their control.

Subsection (f)(1)-(3) adopts conditions under which an authorized carrier may lease equipment to or from another authorized carrier. Provided the prescribed written agreement is maintained, a written lease agreement specified by subsection (d) is not required. Often an authorized carrier will have need for additional equipment; however, in some instances, one authorized carrier will lease equipment from another authorized carrier. As both carriers are operating with valid MCP permits and have already demonstrated adequate levels of liability insurance, these transactions will be mostly limited to validation of the assignment of the vehicle and identification of the appropriate authorized carrier under whose MCP permit the vehicle is being operated.

The term “private carriers” is also deleted as the term “authorized carrier” encompasses both private and for-hire motor carriers. Use of the additional term “private carriers,” separate from authorized carriers may lead some readers to believe the term authorized carriers includes only for-hire carriers; thereby, inappropriately excluding private carriers from the definition.

Subsection (f)(3)(B)2., following further review by the CHP, is deleted as references to the interchange agreement are not necessary for leases between intrastate authorized carriers. While this type of business arrangement is common in interstate operations it is not provided for under the MCP Act and would be inappropriately used in this context.

Subsection (g) adopts an implementation period by which intrastate authorized carriers already involved in some sort of agreement to transfer the use of vehicles will have until June 30, 2011, to comply with the newly adopted requirements for specific elements to be contained within a lease agreement. Prior to the adoption of Section 1235.7, no rule existed permitting the transfer of vehicles for use by other than the owner; therefore, intrastate authorized carriers have not been subject to any set of specific leasing requirements and have often modeled their agreements in a manner which best fit their particular operation. In order to provide a less burdensome transition for the affected industry, the CHP will enact an implementation period (grace period) of a duration to satisfy any existing agreements, up to one year, enabling any new agreements to be drafted in a manner which will comply with the more specific requirements listed in Section 1235.7.

Subsection (h) adopts the October 1, 2009, edition of Title 49, CFR, Part 376, for interstate authorized carriers and drivers. In order to draw a clear distinction between the rules for interstate and intrastate drivers, the CHP has addressed the rules separately. Therefore, subsections (a) through (g) will only refer to intrastate drivers and authorized carriers, and subsection (h) will only refer to interstate drivers and authorized carriers. This will provide interstate drivers and authorized carriers with seamless uniformity between state and federal leasing regulations, thereby, permitting interstate authorized carriers to operate under one set of rules.

Subsection (i) is adopted to provide an address and telephone number to assist the affected industry in obtaining copies of the federal regulations referenced in subsection (g).

Subsection (j) is adopted for the purpose of permitting an authorized carrier which operates in both interstate and intrastate commerce to operate under an identical agreement for both modes of operation. Although the intrastate lease agreement requirements are less in scope, it may be more burdensome for the affected industry to develop and use multiple agreements in order to satisfy the interstate and intrastate requirements.

Title 13, California Code of Regulations 1256, Identification.

Subsection (a)(1) adopts language requiring clear identification of the authorized carrier operating each commercial motor vehicle. Specifically, when more than one name is displayed

on a motor vehicle, the name of the authorized carrier operating that vehicle would be preceded by the words "operated by." Often, when a vehicle is leased, the name of the owner may be permanently painted on the side of the vehicle. This provision will permit the owner to retain their name on the vehicle and simply add the name and identification number of the authorized carrier, provided this subsection is adhered too. This same provision exists in the federal marking rules. This adoption will lend clarity to the marking requirements and permit interstate and intrastate authorized carriers to operate under a single set of vehicle marking requirements.

Subsection (b) is adopted to add the vehicle marking requirements specific to the CA number issued pursuant to Section 1235.3. This requirement also contains exceptions for vehicles displaying a valid number issued by the US DOT or the California Public Utilities Commission (CPUC).

More specifically, this subsection requires a vehicle to be marked with the CA number, including the "CA" prefix, clearly identifying the authorized carrier responsible for the operation of the vehicle.

Subsection (b)(1) adopts an exemption for the display of the CA number, provided the authorized carrier is displaying a valid number issued by either the US DOT or the CPUC. The intended purpose of the identification numbers is to provide a means of identifying the authorized carrier under whose authority the vehicle is being operated. If the vehicle is already marked with a valid operating authority, issued to the authorized carrier, the identity of that authorized carrier may be easily determined. The need for additional identification numbers is considered overly burdensome and serves no additional purpose for fulfilling the intent of the subsection.

Subsection (f) is adopted to permit the display of additional information to a vehicle, provided that display is not specifically prohibited or in conflict with the requirements of Section 1256. Often a vehicle, or combination of vehicles, will contain advertising or other identifying information. Provided this information does not conflict with the intent of this section, in a manner which could confuse law enforcement or the public as to whose authority or permit the vehicle is being operated, that information is permitted in addition to the required identification.

Subsection (g) is adopted to provide specific requirements for the display and maintenance of the information required by Section 1256. Subsection (g), is consistent with the diplay requirements found in CVC, Section 34507.5, and the CFR, Section 390.21. This Subsection is necessary to ensure consistency in identification and ensure legibility of the required information.

Subsection (h) is added to permit the use of removable devices in lieu of permanently marking a vehicle with the required identification information. It is a common practice for authorized carriers to provide placarding (name and identification number) on a removable device such a magnetic or adhesive signs which can be readily removed with little-to-no damage to the vehicles paint or coatings. This subsection makes clear the concept of using other than paint to display the markings required by this section.

WRITTEN COMMENT PERIOD

The CHP received two written responses to the June 5, 2009, Notice of Proposed Regulatory Action. Summaries of the two written comments, discussions and responses follow.

1st Written Comment:
Mr. Eric Sauer, Vice President
Policy Development
California Trucking Association

"Prior to the Motor Carrier Act of 1980, the entrance requirements for a small carrier to obtain operating authority through the ICC were a substantial hurdle to market entry. Additionally, even if a carrier had operating authority, loads which needed to travel over routes the carrier did not have the legal authority to utilize required an agreement with a carrier which had proper authority. The difficulty posed in initially entering the motor carrier industry and moving freight along authorized routes spurred the creation of a lease arrangement by which an equipment owner could utilize a larger carrier's operating authority and carriers could move freight on each other's designated routes.

However, since the deregulation of rates, routes and services, what is required of carriers to obtain both state and federal authorities to operate has been substantially lowered, and the ICC, succeeded by the FMCSA, has largely limited their scope of safety regulations. The regulation by the FMCSA of lease language is one of the few areas of economic regulation of the motor carrier industry left."

CHP Response: The California Trucking Association (CTA) asserts that the leasing and interchange regulations were developed for the purpose of permitting an equipment owner to utilize the operating authority of a larger motor carrier in order to move freight over each other's designated routes. On the other-hand, the CHP would argue just the opposite; the leasing and interchange regulations were in large part adopted to permit the larger carrier to operate vehicles it does not own, under a single operating authority; that of the larger motor carrier. The provisions of the regulations were intended to clearly spell out the transfer of a motor vehicle from an owner-operator to an authorized motor carrier.

The CHP would also argue the assertion that "regulation by the FMCSA of lease language is one of the few areas of economic regulation of the motor carrier industry left." The ICC clearly indicated in a January 9, 1979, decision (Ex-parte No. MC-43 [Sub-No. 7]) that the lease and interchange regulations were adopted in order to promote full disclosure between carriers and owner-operators, often referred to as "truth-in-leasing."

Comment: "With regards to the NPRA section titled '*Effect on Small Business*', it should be noted that this proposal represents a brand new mandate for Intrastate Motor Carriers who utilize owner-operators. Through our discussions with interstate carrier members of CTA already complying with *49 CFR 376*, we've determined the additional administrative burden will require

an increase in the staff and cost necessary to operate an intrastate fleet.

Also, through consultations with several attorneys specializing in transportation, it has been noted that litigation can be brought about by a single breach of contract. Such a lawsuit could create cause for class action for all contractors subject to the same leases brought under scrutiny. Further complicating matters is that, per case law, these contracts are not 'one size fits all'. Smaller carriers would be less able to bear the costs associated with tailoring and updating complex legal contracts."

CHP Response: It is important to clarify the CHP does not intend to adopt regulations requiring or mandating any particular business relationship for "Intrastate Motor Carriers who utilize owner-operators." To the contrary, the proposed regulations are intended to permissively regulate business relationships where a motor carrier leases a vehicle in order to use that vehicle as part of its own fleet. In no way do these regulations require a motor carrier to lease a vehicle or mandate the creation of any type of business relationship which does not already exist.

For a number of years, the CHP has met with industry representatives in order to explain the individual ownership of carrier identification. The motor carrier industry has long held a number of individual understandings of how the ownership of this identification may be applied. This lack of a single understanding has prompted the necessity for the CHP to adopt regulation in order to make clear the intent of carrier identification.

Throughout this process, the CHP has stood by its intent to further clarify the need for a more consistent means of identifying motor carriers operating in interstate or intrastate commerce. While FMCSA has had leasing regulations in place for well over half a century, the CHP is finding it more necessary than ever before to adopt those rules in order to provide an equal application of those rules, with regard to federal and state enforcement programs.

As for the state's intrastate motor carriers, no rules currently exist permitting a motor carrier to use vehicles it does not own and to display the identification number of the motor carrier using those vehicles. While motor carriers have often rented or leased vehicles from large companies whose business is to lease vehicles (companies principally engaged in this business are excepted from much of these proposed regulations), no regulations are in place to allow for a consistent approach to this type of business practice for individuals wishing to lease their vehicle, with or without a driver.

As for the legal arguments referring to potential litigation, the CHP is only proposing the leasing contracts contain generic elements, consistent with the federal rules; the specifics of each element are up to each motor carrier to specifically define as their business needs dictate. Also, the CHP requires a number of documents be created by a motor carrier involved in the transportation industry, anyone of which might bring about litigation if incorrectly executed. It is not within the purview of the CHP to be any more specific than what is proposed by these regulations or to develop regulations which are so prescriptive in nature as to tell the motor carrier exactly how to avoid litigation. The motor carrier is held responsible to make its own business decisions as to whom to do business with and then how that business relationship will

be orchestrated. The only interest of the CHP is to be able to identify the motor carrier, through consistent documentation of the relationship, once those decisions are made.

Comment: "The proposed language found in 1235.7 (g) merely states that carriers engaged in interstate commerce shall comply with the federal leasing regulations. It is silent as to enforcement as well as to 'mixed' or 'dual' operations."

"Also, certain agricultural commodities are exempt from federal lease requirements per 49, USC Sec. 13506."

CHP Response: From the onset, the CHP recognized the need for intrastate regulations which would not conflict with those regulations applicable to interstate motor carriers. This was the primary reason for proposing regulations which so closely mirror the federal regulations. As the proposed regulations now exist, a motor carrier who is currently operating lawfully under the federal rules will not need to make any changes to their current agreements in order to also comply with the state rules. However, to ensure clarity, the CHP has added subsection (j) to 13 CCR, Section 1235.7 to the adopted regulations expressly permitting use of the federal rules for interstate operations.

As for intrastate motor carriers who choose to utilize these rules once they are in place; nothing would preclude that motor carrier from adding the additional federal elements, at the time the agreements are created, in order to allow a seamless transition into interstate commerce, at some future date.

With regard to the federal exemption of agricultural commodities; this exemption is relative to federal jurisdiction and not specific to Part 376. The U. S. Code, Title 49, Section 13506(a), specifically states, in part: "Neither the Secretary nor the Board has jurisdiction under this part over -

(1) a motor vehicle transporting only school children and teachers to or from school;
(2) a motor vehicle providing taxicab service;
(3) a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a carrier;
(4) a motor vehicle controlled and operated by a farmer and transporting -
    (A) the farmer's agricultural or horticultural commodities and products; or
    (B) supplies to the farm of the farmer;
(6) transportation by motor vehicle of -
    (A) ordinary livestock;
    (B) agricultural or horticultural commodities (other than manufactured products thereof);

To say U. S. Code, Title 49, Section 13506, was intended to exempt the above listed motor carriers from state oversight is flawed in rational. This is akin to implying the federal legislature never intended the states to regulate pupil transportation (school busses) either, as both references are equal subsections of the same section. While the Secretary of the Department of Transportation may be unable to promulgate regulations for the exempted classes of motor carriers, the states have the authority to exercise full regulatory oversight as evidence by the

omission of any restrictive reference to the states. For this reason, the CHP intends on including the agricultural industry in this regulatory action.

Comment: "The CTA strongly recommends the allowance of an implementation period of no less than 24 months during which violations will be for educational purposes only. Such a period would allow for intrastate carriers to learn about the requirements, hire and train additional staff, and implement compliance protocols.

The probationary enforcement period would be paired with an outreach campaign by the CHP in order to educate intrastate carriers about the new requirements and familiarize Interstate carriers with CHP's intended auditing criteria."

CHP Response: While the CHP finds merit in the concept of providing intrastate motor carriers assistance with the proposed regulations; the proposed 24-month implementation period is excessive and unnecessary. As already stated, the proposed regulations are not mandating a motor carrier to change its business practices or to form new business relationships. The intent is to permit the CHP to both identify interstate motor carriers in the same manner as the FMCSA and to enforce substantially the same requirements on those motor carriers as our federal counterpart.

However, for those business entities which have engaged in some sort of vehicle leasing relationship enacted prior to the proposal of these regulations, the CHP would require the terms of these regulations be met no later than June 30, 2011. This should allow adequate time for the very few intrastate motor carrier's currently involved in leasing vehicles for intrastate commerce, to update their contracts (if not already using the federal rules as a business model) and comply with the proposed regulations, once adopted.

Comment: "Section 1235.7(3)(E) of the proposed regulation requires retention of the written leases for six months following the termination of a lease. However, the corresponding federal regulations at 49 CFR 376 have no specified record retention guideline. Would the adoption of the 1235.7 require an interstate carrier, subject to 49 CFR 376, to maintain copies of the lease for six months after termination or would this only apply to intrastate carriers."

CHP Response: Title 13, CCR, Section 1235.7(c)(4)(E) ([3][E] in the original text), is only applicable to intrastate motor carriers, as stated in subsection (a) of that same section. The purpose of the six-month retention period is to permit enforcement personnel the opportunity to identify which vehicles were under the control of the motor carrier for the time immediately preceding an inspection. Because both the statutory and regulatory definition of "motor carrier" acknowledge those instances where a motor carrier leases a motor vehicle; thereby, making that vehicle part of the motor carrier's fleet and consequently the motor carrier's responsibility for the purpose of the safety regulations contained in 13 CCR, Chapter 6.5, it is imperative that inspection personnel know the duration the agreement was in effect.

As for the retention requirements imposed by FMCSA, the CHP would like to note that Title 49, CFR, Section 379.3 (ref. Appendix A section 5.[f]) requires motor carriers to retain lease

agreements for a specified retention period of 1 year after the expiration or termination of the lease. However, the CHP chose not to place any greater burden on industry than necessary. The six-month retention period is intended to mirror the same retention period required for Supporting Documents contained in 13 CCR, Section 1234(a). In fact, it could be argued, based on the owner/driver's relationship to the vehicle (vehicles are routinely leased *with a driver*), the requirement in 13 CCR, Section 1235.7(c)(4)(E) is somewhat duplicative of the retention requirements in 13 CCR, Section 1234(a), but for the sake of clarity, the CHP elected to list the lease retention requirement separately.

Comment: "For independent contractors whose leases have expired less than six months ago, we know that the Department's current position is that the driver and maintenance records are the responsibility of the overlying carrier for the period while the lease was in force, but we are unclear regarding its viewpoint on the responsibility for fees. It is our understanding that the Department's viewpoint is that the physical inspection of vehicles is not the responsibility of an authorized carrier lessee once control of the vehicle is returned to the registered owner lessor."

CHP Response: While the CHP is unclear as to the reference to "fees;" CTA's reference to the responsibility of the motor carrier is accurate. During the period the lease is in effect, the lessee is the motor carrier, pursuant to CVC Section 408, and 13 CCR, Section 1201(q). At the time the lease expires or for some reason is made null, the responsibilities associated with being the motor carrier are applicable again to the lessor. This is not to say the lessee does not remain responsible for those requirements which were in affect "on his watch," but the scope and duration of responsibility commence on the day the lease went into effect and terminate on the last effective day of the lease.

Comment: "These last points bring to the fore the larger issue, that it is difficult to fully expect regulated entities to comment on a proposed rulemaking when the extent of punitive actions resulting from the rulemaking has not been disclosed. Will a missing or incomplete lease agreement result in a driver being placed out of service? Will there be a fine imposed? Will there be ramifications for BIT inspections if leases are not maintained correctly? Also, how will the CHP enforce those provisions related solely to economic aspects of the relationship between an Independent Contractor and the overlying carrier? Will it now be investigating and acting upon every complaint that a carrier paid the Independent Contractor in 16 days rather than 15 or calculated the interest incorrectly upon a $500 escrow account? Such issues simply illustrate how far beyond safety concerns the proposed regulations go."

CHP Response: As for the question of enforcement, the CHP is limited in enforcement by the statutory oversight and punitive authority provided by the legislature. Regarding the matter of motor carrier being placed out of service for a "missing or incomplete lease agreement," the Department is limited to exercising its out-of-service authority within the scope of the North American Standard Out-of-Service Criteria, as published by the Commercial Vehicle Safety Alliance and adopted by reference into 13 CCR, Section 1239.

With regard to fines and the Biennial Inspection of Terminals (BIT) Program, an incomplete lease agreement will be treated as any other documentation discrepancy, resulting in

documentation during a BIT inspection (administrative, not punitive) and missing leases will be treated as though no lease exists. Without a lease in place, identifying someone other than the registered owner as the motor carrier responsible for the vehicle; the registered owner is considered the motor carrier for the purpose of the BIT Program, unless the registered owner can provide articulable proof to the contrary.

As has been stated from the beginning of this rulemaking process, the purpose and intent of this regulatory action is to provide a consistent identification of motor carriers for both interstate and intrastate operations. It was never the intent of the CHP to provide any regulatory oversight regarding the economic practices of the motor carrier industry. As a matter of fact, the proposed regulations were intentionally drafted to allow the various types of carriers using vehicles provided by a lessee the greatest latitude in establishing leases.

The regulations simply describe the elements to be contained within a lease agreement and in no way are they intended to dictate to a motor carrier what conditions to prescribe for each element. As an example, regarding the element described as "Compensation to be Specified;" the CHP is not concerned with the actual compensation value, but only that the agreement contains a compensation clause.

However, after careful review of the proposed regulations, the CHP finds merit in CTA's concern with the enforcement of certain aspects of the proposed regulations. The CHP has determined that certain elements of proposed 13 CCR, Section 1235.7 can be deleted without a substantive impact on public safety, allowing a more concentrated enforcement effort on those elements directly effecting safety matters. The CHP proposes to delete subsection (b)(5), *Escrow Fund* (defined); all or part of subsections (d)(5), *Items Specified in Lease*; (d)(6), *Payment Period*, (d)(8), *Charge Back Items*; (d)(9), *Products, Equipment, or Services from Authorized Carriers*; (d)(10)(C), *Insurance*; and (d)(11), *Escrow Funds.* While the CHP continues to support the concept that requiring an agreement to contain these elements, without regulating the content of these elements, does not constitute economic regulation; the argument can be made that these elements may be deleted, lessening the requirements on those motor carriers choosing to use this provision, without a substantive impact on public safety.

Comment: "The proposed rulemaking is, at present, rife with regulatory language not germane to Carrier Identification. Specifically, 49 CFR 376 is twentieth century, pre-deregulation law which should not be brought into the regulation of our modern trucking industry. The adoption of federal language, which was originally meant to allow equipment owners who could not obtain ICC authority to operate and authorized carriers the ability to travel on regulated routes they could not legally carry freight on, will only serve to confuse safety regulations.

Thankfully, the California Vehicle Code already provides the Department and Industry the vehicle by which to convene to discuss the promulgation of modern regulatory language which will truly serve clarify safety and auditing responsibilities for motor carriers of property engaging owner-operators. CVC 34501(a)(3) provides for a 15-member committee to serve in an advisory capacity to the Department. We strongly recommend the convening of this Industry Advisory

Committee to assist in the formation of new rulemaking which will better serve the Department's stated purpose of Carrier Identification.

In summary, the Proposed Regulatory Action will not accomplish what it is intended to do. CTA is requesting the Department not move forward on adopting the NPRA until a more reasonable proposal can be formulated with industry input. As stated previously in the comments, adopting this rulemaking will lead to confusion, possible litigation and will not bring the Department and industry a true resolution."

CHP Response: The CHP respectfully disagrees with this comment by CTA stating the federal language "was originally meant to allow equipment owners who could not obtain ICC authority to operate, and authorized carriers the ability to travel on regulated routes they could not legally carry freight on." The ICC made clear the intent of the Lease and Interchange regulations were "adopted to promote full disclosure between carriers and owner-operators." This clarification is found in the ICC decision *Ex Parte No. MC-43 (Sub-No. 7), decided January 9, 1979.*

Clearly, the intent of the federal regulations were to permit authorized motor carriers to perform transportation activities in vehicles it did not own and to provide transparence with regard to the written instruments used to transfer that equipment. The means of transfer, pursuant to Title 49, CFR, Part 376, is a lease. This is not a term used to describe a contract/subcontract relationship between two motor carriers; a loose arrangement to allow one motor carrier to use the motor carrier identification number of another authorized motor carrier; or even a vague sort of leasing of services of one motor carrier by another motor carrier; but an actual leasing of a vehicle (with or without a driver) by an authorized motor carrier to use as its own.

The CHP has met with affected industry representatives (including many of those currently on the Motor Carrier Advisory Committee) on numerous occasions during the past ten years in an attempt to resolve this matter in the most effective manner while presenting the minimal impact on the motor carrier industry. During this period of time, the CHP has collected dozens of lease agreements (primarily interstate in nature), each different from the next. Many of these agreements borderline on sub-contract agreements with only a minor reference to leasing the vehicle, generally through a vague reference to Part 376. For this reason, it is imperative the CHP adopt rules which will assist in clearly identifying the responsible motor carrier.

It is uncertain additional meetings would result in any new information from which to base adoption of these regulations. The CHP is not opposed to continuing a healthy dialogue with the effected industry, but little latitude exists when adopting federal rules for enforcement by the state.

Written Comment:
Mr. James Johnston, President
Owner-Operator Independent Drivers Association, Inc.

"The Owner-Operator Independent Drivers Association, Inc. is a not-for-profit corporation incorporated in 1973 under the laws of the state of Missouri, with its principle place of business

in Grain Valley, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators, small business motor carriers and professional drivers. The nearly 159,000 members of OOIDA are professional drivers and small business men and women located in all 50 states and Canada who collectively own and operate more than 240,000 individual heavy-duty trucks and small truck fleets. One-truck motor carriers represent nearly half the total number of active motor carriers operating in the United Stats while approximately 96 percent of active motor carriers operate 20 or fewer trucks."

Comment: **"**Insuring that violations are attributed to the proper motor carrier entity and that processes are in place to prevent them from simply shutting down and reopening under a different CA number is identical to a well recognized problem at the national level in issuance of US DOT operating authority. The Federal Motor Carrier Safety Administration ("FMCSA") recognizes this is a problem and refers to these 'rouge' motor carriers as 'chameleon carriers.' This is because of the extent ownership will go to hide their association with a previous motor carrier as they attempt to circumvent federal regulations that they run afoul of. OOIDA believes that this proposed rulemaking will enhance CHP's ability to place proper accountability on the responsible motor carrier and thereby improve highway safety within California."

CHP Response: The CHP agrees with the Owner-Operator Independent Drivers Association's (OOIDA) concern with "chameleon carriers." The activity of simply inactivating or abandoning a motor carrier entity which is facing administrative actions or criminal charges and resurfacing as a new motor carrier, is a method often used by unscrupulous motor carriers to thwart MCP permit suspensions or court imposed fines. For this reason, the CHP has promulgated regulations, as a result of this rulemaking, to clarify the intent of 13 CCR, Section 1235.4(b), authorizing the CHP to not only refuse to issue a CA number, but to permit the deletion of a CHP number issued to a motor carrier with an action pending through the DMV or the PUC.

Comment: "This rulemaking also proposes to adopt a new Section (13 CCR §1235.7) governing leased vehicles for California intrastate motor carriers. This new Section effectively mirrors the federal regulations contained in 49 C.F.R. Part 376, Subparts A, B, and C. As noted in the *Initial Statement of Reasons* for this proposal, California based motor carriers engaged in interstate commerce are unaffected by this proposed rule since they must already be in compliance with 49 C.F.R. Part 376 if leasing vehicles.

The adoption of regulations governing the lease of vehicles not owned by the motor carrier who conducts their business only within California is long overdue. Many motor carriers and their respective associations are likely to oppose this rule as unnecessary and an interference in the marketplace with little or no associated safety benefit. It has been clearly shown in studies that there is a direct correlation between compensation and highway safety."

CHP Response: The CHP has stated from the beginning of this rulemaking process that because interstate motor carriers are already subject to the leasing rules listed in Title 49, CFR, Part 376, the proposed rules will not add any regulatory burden to the interstate community. However,

adoption of the federal regulations will authorize the CHP to enforce rules which are already imposed on hose motor carriers by the FMCSA.

Comment: "Highway Safety can only be improved when the proper party is held accountable for violations made under their authority. The assignment of unique identification numbers will allow the Department of motor vehicles and the CHP to identify those carriers who are attempting to circumvent the law by addressing this issue. When a motor carrier evades their responsibility by reinventing itself as another entity to shield itself from sanctions, not only is highway safety compromised, but the entire motor carrier industry that complies with regulations are placed at a competitive disadvantage in the marketplace.

The Federal Motor Carrier Safety Administration has attempted to address this issue of being able to identify and track motor carriers through several initiatives:

- The Commercial Vehicle Information Systems and networks (CVISN)
- The Performance and Registration Information Systems Management (Prism)
- The Comprehensive Safety Analysis (CSA) 2010 initiative

All three have a nexus to improving highway safety and the promise of more accountability. Unfortunately, all these initiatives will fail to fulfill their potential if enforcement is lax and penalties are seen as nothing more than a "cost of doing business". OOIDA has a significant body of knowledge involving the 'flipping' of ownership, 'masking' and 'chameleon' behaviors of motor carriers who are especially egregious violators of the federal regulations that effect safety. Yet, even with federal court decisions of guilt and documented challenges to the issuance of new authority from OOIDA, certain motor carriers and their corrupt management are still allowed to operate with impunity by the granting of new operating authority.

CHP Response: The CHP agrees with the need to correctly identify the person responsible for motor carrier operations. The Owner-Operator Independent Drivers Association is accurate with identifying the multiple means the FMCSA has used to attempt to identify motor carriers and then use those processes to further identify unsafe motor carriers. It is also essential to public safety to identify unsafe motor carriers and then hold those persons responsible for unsafe operations without permitting them to simply recreate themselves as a new entity, without any of the past history, but continuing the same unsafe operating practices.

Comment: The linkage between minimal standards governing the lease of equipment/drivers and highway safety should be obvious to anyone. For example, during the past couple of years the burden of owner-operators at the ports of Los Angeles, Long Beach, and Oakland has been communicated in most California newspapers as well as nationally. In many instances, the difficulties and short-cuts port truckers take in an effort to maintain their trucks, can be attributed to the predatory practices of the motor carrier community that will not take responsibility for the vehicles they operate but instead are using the owner-operator status as an independent contractor to avoid any penalty. While financial schemes have been put in place to modernize much of California's drayage fleet, the financial ability of owner-operators to effectively and properly

maintain their equipment - even new equipment - is compromised by a lack of minimal regulations governing their business relationships."

CHP Response: Beginning in 2003, the CHP joined the FMCSA, as a state partner, assisting in conducting federal New Entrant Safety Assurance Process (NESAP) audits. In order to best conduct these audits, it was necessary the CHP better understand the leasing regulations and properly identify the motor carrier being audited.

This new understanding of the leasing regulations led the CHP to understand the gross misapplication of the federal rules across the interstate motor carrier community. The most common misconception was a belief that the leasing regulations did not actually pertain to the lease of a vehicle, but a lease of services; resulting in a hybrid sort of subcontract agreement where the "owner-operator" remained responsible for his own maintenance and hours-of-service requirements, yet held himself out as the overlying motor carrier through placarding and shipping papers in order to fulfill contractual agreements.

The overlying motor carrier benefited greatly from this arrangement while the owner-operator shouldered the cost and regulatory responsibilities. As the CHP's understanding of these arrangements increased, identification of the motor carrier and the associated regulatory responsibilities became more consistent. In the above scenario, minus a clear lease agreement, owner-operators were told to remove the overlying motor carrier's name and identification from their vehicle and to obtain their own operating authority.

This type of enforcement forced the overlying motor carriers more in the direction of a lease agreement, but in most instances, the language remained vague and at times very difficult to discern from a sub-contract. Adoption of these proposed regulations will permit the CHP to enforce specific requirements, making clear who is responsible for the motor carrier operations. The CHP fully agrees with OOIDA's link between "standards governing the lease of equipment/drivers and highway safety." The answer is obvious, it is necessary to identify the motor carrier responsible for the day-to-day operations in order to correctly apply regulatory oversight.

PUBLIC HEARINGS

The CHP held a public hearing on October 15, 2009. The hearing related to Carrier Identification. A total of 3 attendees provided comment. A summary of this hearing follows.

1st Commenter
Joe Rajkovacz
Regulatory Affairs Specialist
Owner-Operators Independent Drivers Association

Comment: "OOIDA supports CHP's proposal to adopt the new Section 1235.7; adopting into the California Code of Regulation essentially regulations modeled after the federal leasing rules. 'What's good for the goose is good for the gander.' Interstate motor carriers have had to comply with these regulations ever since the termination of the ICC; we've worked to see that these

regulations were maintained, because it does establish a basis of contracting between owner-operators and motor carriers. It establishes a floor. For that purpose we certainly would like to see CHP follow through and adopt those regulations."

CHP Response: As the CHP has indicated, adoption of the federal rules for interstate motor carriers will not result in any additional requirements because those motor carriers affected by the state regulation are already subject to identical federal regulation. The CHP finds it necessary to adopt the federal regulations, by reference, in order to enforce identical rules as our federal partners, the FMCSA.

2nd Commenter
Fred Recupido, Transportation Advisor
California Dump Truck Owners Association

Comment: "While the CDTOA is not necessarily opposed to this regulation, quite frankly, I am trying to figure out what the purpose of the legislation is. According to what I am reading, the California intrastate carrier must still have a CA number and have a motor carrier authority of his own. We in the dump truck business cannot see any type of scenario where a lease would ever be entered into in not only the dump truck business, but any other sort of intrastate carriage because each person must have their own CA number.

The other question we would have, or the confusion we would have, is poor carriers down in the port if they are a California motor carrier are not precluded from leasing on with another motor carrier. My company for example is a California motor carrier for intrastate and I also hold ICC motor carrier authority through the federal government. So, I would say we are a little confused and we would have questions as to exactly what the purpose is as far as application to intrastate transportation.

Again, as a 38 year carrier in California and being a prime carrier who hires owner operators I cannot see in any case would I need to nor would I want to in any circumstance lease another owner operator with a truck. That would be the absolute last thing I would want to do."

CHP Response: The CHP understands the "confusion" expressed by the CDTOA. Minus clear state oversight and the lack of consistent enforcement, the industry has developed a number of self-defined methods of determining compliance with the federal leasing regulations. This is further aggravated with predominantly intrastate-based organizations, such as the CDTOA, who have never had any leasing rules in place to clearly regulate the operation of vehicles they do not own.

Promulgation of these regulations will permit the CHP to work with their federal partners, the FMCSA, to consistently apply and enforce the federal rules with interstate motor carriers and to provide a level and equal platform from which to apply the intrastate rules with intrastate motor carriers. As already indicated, in order to minimize the need for duplication; a motor carrier involved in both interstate and intrastate operations, will be permitted to comply with the federal rules across all operations, thereby, being deemed compliant with state requirements as well.

3rd Commenter
Nick Thompson
Director of Safety and Policy
California Trucking Association

Comment: "The CTA does not agree that CVC 34501, cited as authority by the Department in its initial statement of reasons, gives the Department the proper provision of law to enact this rule. We also believe it to be in conflict with federal statute, specifically, the Federal Aviation Administration Act of 1994, otherwise known as the "F Four A".

CVC 34501 says the Department shall adopt reasonable rules and regulations that are designed to promote the safe operation of commercial vehicles. However, even after reading the Department's Initial Statement of Reasons, the question still remains: How does the regulation of the fiduciary details, of lease contracts, promote safety?

In fact, the Department wrote in its Initial Statement of Reasons that regulating the content of leases was deemed necessary by the ICC to prevent independent contractors from "being taken advantage of by the larger, more business savvy, overlying motor carrier". This is old language from an agency that did have economic authority during regulated commerce.

While attempting to prevent smaller carriers from being taken advantage of by larger carriers may be a legitimate consumer affairs or fair business practice issue, we fail to see how it relates to promoting safety and further how and from where did the department receive its authority to regulate business practices?"

CHP Response: The CHP is promulgating regulations relative to motor carrier identification based on the authority contained in CVC, Section 34501. This section authorizes the CHP to "adopt reasonable rules and regulations that, in the judgment of the department, are designed to promote the safe operation of vehicles described in CVC, Section 34500." As has already been discussed in this document, identification of the motor carrier is necessary for the CHP to carry out its duties relating to motor carrier safety.

As for the Federal Aviation Administration Act of 1994, this Act (P.L. 103-305) amended U. S. Code, Title 49, Section 11501(h). However, this section was later amended by the ICC Termination Act of 1995 (P.L. 104-88, Sec. 102[a]) and as a result of this amendment, the text of Section 11501(h) was moved to U. S. Code, Title 49, Section 14501(c).

The subject of this section was and is motor carriers of property; the section states, in part; "states may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a *price*, *route*, or *service* of any motor carrier. However, this same section, Paragraph (c)(2), goes on to state, Paragraph (1)(A) [of Section 14501(c)] shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with

regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization."

As already indicated, the CHP has no interest or intention of regulating the economic aspects of the motor carrier industry. Simply requiring a document to contain specific subject matter is not the same as enforcing the specifics contained in that provision of the agreement. The regulation of vehicle leasing and motor carrier responsibility has been a long-time practice of the US DOT and is not simply a hold over from the days of economic regulation. The current FMCSA and the CHP both realize the importance of identifying motor carriers and the equipment they operate.

Comment: "After the adoption of the 'F Four A,' California passed AB 1451 (Conroy) into statute, severely limiting the Commissions power to economically regulate trucking. This included limiting the regulation of the relationship between prime carriers and subhaulers solely to restricting prime carriers from engaging unlicensed subhaulers.

If the Department were to adopt the current proposal, it would conflict with some of the actions taken by the Commission to conform with the 'F Four A.'

For instance, the PUC used to require prime carriers paying subhaulers on a percentage of the freight bill revenue to be given, upon request, a rated copy of the freight bill or bills.
The Commission deemed this provision pre-empted by the 'F Four A' because it did not oversee safety, route controls based on size and weight or hazardous cargo, or insurance."

CHP Response: As is often a point of misunderstanding, the CHP has no interest in regulating the business relationship between a "prime carrier" and their "sub-haulers." This proposal does not address contractors and sub-contractors, but rather attempts to address motor carriers with federal operating authority, or a state MCP permit, who use vehicles they do not own.

This is the very type of misapplication of federal rules which necessitated this rulemaking. Subcontracts between motor carriers are a completely separate matter. These are general business arrangements where one motor carrier contracts the services of another motor carrier in order to fulfill a larger contract. In these instances, both motor carriers are required to have the applicable authority or permit and act as themselves for the purpose of fulfilling the contract.

However, the purpose of these rules are intended to identify the viable motor carrier entity (the motor carrier with a valid authority of permit) who leases vehicles, displays the leasing motor carriers name and identification number on both sides of the vehicle, and either hires or contracts a driver to operate the vehicle on the motor carrier's behalf. This is a very different matter than that which is addressed by the commenter; but nonetheless, a common misunderstanding or misapplication of the rules.

SECOND WRITTEN COMMENT PERIOD

The CHP received two written responses to the July 16, 2010, Modified Notice of Proposed

Regulatory Action. Summaries of the two written comments, discussions, and responses follow. To provide a clear overview of those comments received, each comment will be addressed separately.

Written Comment:
Mr. Eric Saur
Vice President, Policy Development
California Trucking Association

Comment: "In 1978, Congress "determin[ed] that 'maximum reliance on competitive market forces" would favor lower airline fares and better airline service and, pursuant to this determination, it enacted the Airline Deregulation Act. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992) (quoting 49 U.S.C.App. § 1302(a)(4) (1988 ed.)); see 92 Stat. 1705. In order to "ensure that the States would not undo federal deregulation with regulation of their own", that Act "included a preemption provision" that said "no State…shall enact or enforce any law…relating to rates, routes, or services of any air carrier". *Morales*, supra, at 378; 49 U.S.C.App. § 1305(a)(1) (1988 ed.).

In 1980, Congress deregulated trucking (Motor Carrier Act of 1980). A little over a decade later in 1994, Congress similarly sought to preempt state trucking regulation (Federal Aviation Administration Authorization Act of 1994; see also ICC Termination Act of 1995). In doing so, it borrowed language from the Airline Deregulation Act of 1978 and wrote into its 1994 law language that says: "[A] State...may not enact or enforce a law…related to a price, route, or service of any motor carrier…with respect to the transportation of property". 49 U.S.C. § 14501(c)(1); see also § 41713(b)(4)(A) (similar provision for combined motor-air carriers)."

CHP Response: As previously indicated in the CHP's response to CTA's written comments received relative to the June 5, 2009, Notice of Proposed Regulation and verbal comments made at the October 15, 2009, public hearing, the adopted regulations have no ties to the antiquated practice of regulating price, routes, or services.

Under the regulations which existed prior to the abolishment of the ICC, motor carriers were regulated with regard to the routes they could use, the rates they could charge, and the commodities they could transport. In large part, the ICC Termination Act of 1995, repealed these regulatory practices. In doing so, Congress prohibited the states from enforcing or enacting similar regulations. With the adoption of these regulations, the CHP has no intent to dictate which routes are to be used by a motor carrier; establish minimum or maximum charges to be applied to any aspect of the motor carriers operation; or prescribe or limit what services a motor carrier can perform in the course of its business operations. This rulemaking does not affect these motor carrier operations in a direct or indirect manner.

However, elsewhere in the ICC Termination Act of 1995 (49 US Code, Section 14102), Congress again addressed the leasing issue by requiring a motor carrier that uses motor vehicles not owned by it to transport property under an arrangement with another party (not necessarily a motor carrier) to: make the arrangement in writing signed by the parties specifying its duration and the

compensation to be paid by the motor carrier; carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect; inspect the motor vehicles and obtain liability and cargo insurance on them; and have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.

The leasing of motor vehicles, used by a motor carrier which did not own the motor vehicles, was treated as a separate practice from the regulatory and economic oversight referenced by the commenter. These were, and are, completely separate practices, under federal law. While economic regulation was repealed, the practice of leasing vehicles was fortified in the Act.

With regard to preemption, Congress indicated in Section 14501 of the act that the preemptive language referenced by the commenter shall not restrict the safety regulatory authority of a state with respect to motor vehicles, the authority of a state to impose highway route controls or limitations based on the size or weight of the motor vehicle, or the authority of a state to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization. As indicated by the CHP, throughout this regulatory process; the intent of this action is not to provide economic oversight, but to enhance public safety through better identification of the motor carrier and the responsible party.

Comment: "The *Morales* court interpreted the preemption provision in the Airline Deregulation Act of 1978 and in *Rowe v. New Hampshire Motor Transport Association*, 552 U.S. 364 (2008) the court followed Morales in interpreting similar language in the Federal Aviation Administrative Authorization Act (FAAAA). The *Rowe* court found that "when judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its judicial interpretations as well". *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 85 (2006). The Congress that wrote the language at issue in the FAAAA copied the language of the air-carrier preemption provision of the Airline Deregulation Act of 1978. Compare 49 U.S.C. §§ 14501(c)(1), 41713(b)(4)(A), with 49 U.S.C.App.§ 1305(a)(1) (1988 ed.); see also H.R. Conf. Rep. No. 103-677, pp. 82-83, 85 (1994), U.S.Code Cong. & Admin.News 1994, p. 1676 (hereinafter H.R. Conf. Rep.).

In *Morales*, the court determined: (1) that "[s]tate enforcement actions having a connection with, or reference to "carrier" "rates, routes, or services' are pre-empted," 504 U.S., at 384; (2) that such preemption may occur even if a state law's effect on rates, routes or services "is only indirect", id., at 386; (3) that, **in respect to preemption, it makes no difference whether a state law is "consistent" or "inconsistent" with federal regulation**, id., at 386-387; and (4) that preemption occurs at least where state laws have a "significant impact" related to Congress' deregulatory and preemption-related objectives, id., at 390.

We take specific note of the third determination with regards to the Department's insistence that they are seeking to economically regulate motor carrier leases 'to enforce substantially the same requirements…as our federal counterpart'."

CHP Response: Contrary to the claim of the commenter, the CHP has made no claim or "insistence" to seek economic regulation over motor carrier leases. The CHP has only asked for disclosure in order to provide the contracting parties adequate information to ensure the vehicles are safely maintained. The terms and conditions relating to economics are left entirely to the motor carrier and the lessor to negotiate. The CHP will in no way attempt to regulate the content of the lease agreement, but restrict its oversight to verification that the elements of the agreement exist. To state that the CHP has insisted on adopting "economic regulation" is a misrepresentation of the facts.

The additional references to the above listed court decisions are not to germane to this rulemaking as they relate solely to the deregulation and abolishment of the ICC and the prohibition of subsequent economic regulation by the states. As the CHP has already asserted, this rulemaking does not address those elements preempted by the ICC Termination Act of 1995.

Comment: "The court described Congress' overarching goal as helping assure transportation rates, routes, or services that reflect 'maximum reliance on competitive market forces', thereby stimulating 'efficiency, innovation, and low prices' as well as 'variety' and 'quality'. Id. at 378. Morales held that, given these principles, federal law preempts states from enforcing their consumer-fraud statutes against deceptive airline-fare advertisements. Id. at 391. See American Airlines, Inc. v. Wolens, 513 U.S. 219, 226-228 (1995) (federal law pre-empts application of a State's general consumer-protection statute to an airline's frequent flyer program). Finally, Morales said that federal law might not preempt state laws that affect fares in only a 'tenuous, remote, or peripheral…manner' such as state laws forbidding gambling. 504 U.S. at 390. But the court did not say where, or how, 'it would be appropriate to draw the line' for the state law before it did not 'present a borderline question'. Id.; see also Wolens, supra, at 226, 115 S.Ct. 817.

In *Rowe*, the court found that a Maine state law was preempted by the FAAAA after examining statutory provisions that mandated specific delivery procedures for tobacco shipments and deliveries. *Rowe*, 552 U.S. 364. The court noted that the state requirements focused on trucking and other motor carrier services thereby creating a direct "connection with" motor carrier services. Id. at 371.

Similar to *Rowe*, the Department's proposed rulemaking here would tightly regulate the relationship between a motor carrier and its contractors by mandating that specific provisions and language be included in each lease agreement. In doing so, the rulemaking also focuses on trucking and, again, creates a direct "connection with" motor carrier services. At the same time, the rulemaking would have a significant and adverse impact in respect to the FAAAA's ability to achieve its preemption-related objectives. Id. at 372."

CHP Response: As has already been stated by the Department; the CHP has no intent to dictate which routes are to be used by a motor carrier; establish minimum or maximum charges to be applied to any aspect of the motor carriers operation; or prescribe or limit what services a motor

carrier can perform in the course of its business operations. For this reason, the commenter's statements are not germane to this rulemaking. This rulemaking does not regulate rates, routes, or services in either a "direct" or even a "tenuous, remote, or peripheral…manner".

The CHP believes it is important to point out "*Morales v. Trans World Airlines, Inc*." was related to "rates" as it pertained to the deceptive advertising of airline fares. Further, the action taken was between the air carrier and a member of the general public who had no direct tie to the aircraft and its maintenance or repairs affecting public safety. Nothing in the adopted rules addresses what rate a motor carrier can charge for transportation services. The language used in Section 1235.7 is intended to provide disclosure between the motor carrier and the lessor; this disclosure has a direct impact on public safety as the two parties both play a role in the maintenance and repair of the vehicle in question.

Section 1235.7(d)(7) does require the motor carrier to provide a copy of the freight bill to the lessor, but only in those instances where the compensation is based on a percentage of the gross revenue for a shipment. However, the disclosure is limited to those items affecting the compensation due the lessor. This again ties directly to safety as the lessor needs to make an informed discussion as to what financial ability the lessor will have to ensure the vehicle is maintained in a safe manner. In order to ensure the adopted regulation remains performance based and does not intrude on economic regulation, the language permits the motor carrier to provide the information by means other than the freight bill or to redact the name of the shipper or consigner, if the actual freight bill is used.

Comment: "As CTA has noted in previous comments and testimony, this rulemaking would require carriers to enter into economic agreements with contractors that the market does not now require (and which the carriers would prefer not to enter). This proposed rulemaking thereby would produce the very effect that the FAAAA sought to avoid, namely, a state's direct substitution of its own governmental commands for 'competitive market forces' in determining (to a significant degree) the rates, routes, or services offered to the public for transportation services. Id. While the proposed rulemaking here is less 'direct' than it might be, since it only sets out to directly regulate leasing arrangements, the effect is that carriers will have to enter into agreements with contractors that differ significantly from those that, in the absence of the rulemaking, the market might dictate. If FAAAA preempts state efforts to regulate, and consequently to affect, rates, routes, or services, it must preempt the Department's efforts to regulate a carrier's economic relationships as well.

CHP Response: As this rulemaking also adopts federal rules which are already in place for interstate motor carriers under federal regulation; the CHP will address this comment as referring to intrastate motor carriers, as the comments consider the adopted text to be "new requirements." The federal regulations, albeit amended over the years, have been in place since the 1950's.

Again, the federal preemption language is not applicable to the regulations adopted by this rulemaking. The adopted text does not prescribe any level of economic relationship; but rather, the adopted regulation is intended to provide disclosure of certain conditions negotiated between the motor carrier and the lessor.

As for the concern with the type of agreement the "market might dictate;" currently no provision exists for such an intrastate arrangement; therefore, any arguments as to what "might" happen are mute. The regulations are intended to provide opportunity and a clear method of conducting business in a manner similar to that permitted under the federal rules. Because no permissive regulation currently exists, permitting a motor carrier to operate a vehicle which does not belong to that motor carrier, such arrangement is purely an underground operation, with no provision in law to permit such an arrangement.

As has already been stated, Section 1235.7 is intended to be a permissive section. This section does not require anybody to enter into any particular type of business relationship, but rather to establish a method by which public safety can be fortified should two persons choose to do business in this manner. The motor carrier industry is free to use or not use this type of business relationship; it is clearly not within the purview of the CHP to dictate to the industry how to acquire vehicles (lease or purchase) to meet market demands.

Comment: This is not to say that the FAAAA generally preempts state economic regulation: for instance, state regulation that broadly prohibits certain forms of conduct and affects, say truck drivers, only in their capacity as members of the public (e.g., a prohibition on smoking in certain public places). Nor does the FAAAA preempt state laws that affect rates, routes, or services in 'too tenuous, remote, or peripheral a manner.' *Morales*, 504 U.S., at 390. And courts have written that the state laws whose 'effect' is 'forbidden' under federal law are those with a "significant impact" on carrier rates, routes, or services. Id. at 388, 390.

The Court of Appeals for the Ninth Circuit, following the guidance of *Rowe*, has made it abundantly clear that when economic regulation is cloaked under a veil of "safety" that the regulation will not withstand scrutiny under FAAAA. In *American Trucking Associations, Inc. v. City of Los Angeles*, 559 F.3d 1046 (9th Cir. 2009) ("*ATA v. LA*"), the court reversed a district court's order which denied a preliminary injunction sought by ATA against the contracting requirements for motor carriers serving the Ports of Los Angeles and Long Beach. Those contracting requirements, which the Ports issued to "ensure sufficient supply of drayage drivers by improvement of wages, benefits and working conditions", fell far from regulating motor vehicle safety. Id. at 1056.

CHP Response: The CHP does not argue with the findings of "*American Trucking Associations, Inc. v. City of Los Angeles"* as the court determined the Concession agreements sought to reshape and control the economics of the drayage industry in one of the largest ports in the nation. One of its goals was to create a market of "fewer, generally larger, and more stable motor carriers operating trucks" that may, by adhering to the Ports' emissions requirements, "enjoy competitive advantages if they can earn solid reputations for maintaining green operations." The Concession agreements in question, had everything to do with economics and little, if anything, to do with safety.

The closest the Concession agreements came to "safety" was to require each motor carrier to "submit a maintenance and parking plan for each truck." The Concession agreement did not even go so far as to permit follow-up of verification that the proposed plans had been implemented.

The CHP is not proposing to dictate or reshape economic forces relative to the motor carrier industry. The adopted regulations do not dictate the the terms of the lease agreement, but simply require the certain elements of the agreement to be made clear. For instance, the CHP is not concerned with the duration of the lease; the only concern is that the term be disclosed. Likewise, the CHP is not establishing a minimum or maximum level of compensation for the lease of the vehicle, or what will be the established or charged for the transportation service. Rather, the level of compensation is disclosed to permit the lessor information to make sound decisions with regard to the cost of maintaining the vehicle either during or immediately subsequent to the lease term.

Comment: The Department insists that its present rulemaking is grounded in safety, but it cannot provide any justification for its effort to control the economic relationship between carriers and contractors. For example, the Department states on page 28 in its Modified Statement of Reasons that: 'Simply requiring a document to contain specific subject matter is not the same as enforcement the specific contained in that provision of the agreement'. Requiring subject matter to be contained in a contract between two private entities is control over that economic relationship. As noted by the Ninth Circuit, governmental intrusion into how motor carriers accomplish the non-safety related operational aspects of their businesses is subject to FAAAA preemption. Id. at 1057 – 1058. Safety regulation is separate and apart from the nature of the economic relationship between carriers and contractors, and any effort to control that economic relationship by regulation would subject the regulation to FAAAA preemption.

In this case, the Department's rulemaking is not general, it does not affect carriers and contractors solely in their capacity as members of the general public, the impact is significant, and the connection with trucking is not tenuous, remote, or peripheral. The proposed rulemaking aims directly at the relationship between a motor carrier and its independent contractors, a commercial area with carriage by commercial motor vehicles as a central backdrop. The proposed rulemaking would require a motor carrier to incur additional operational costs associated with the required lease provisions – e.g., the cost of professional contract drafting, possible consultation costs to determine necessary lease provisions, cost of contract maintenance, cost of additional staff to administer leases and accordant provisions, cost of retaining attorneys in lawsuits resulting from the leases, etc. – which would without question increase the rates ultimately charged to the public for transportation services.

Given these circumstances, from the perspective of preemption, this case is no more 'borderline' than was the situations in *Morales* or *Rowe* where the proposed regulations were, in fact, found to be preempted by the "rates, routes, or services" language of the FAAAA."

CHP Response: As already indicated, in a case such as *Morales v. Trans World Airlines, Inc*., the persons affected by the state's truth in advertising provisions would have no ability to affect the safe operation of the company's air fleet, as the individuals affected are members of the general public with no say in how the fleet was maintained and are certainly not expected to directly incur the cost of maintenance. However, in the regulations proposed by the CHP, both parties have a direct affect on the way the vehicles are maintained and operated (often the lessor is contracted or hired to drive the vehicle). This is a significant difference between the points made by the commenter and the regulations adopted by the CHP. For these reasons, the CHP argues that the case presented is not germane to the intent of the regulation.

Comment: "The California Public Utilities Commission (PUC) has already addressed issues of preemption, as it pertains to lease agreements between carriers and contractors. In 1994, with PUC Resolution TEA-4, the PUC amended Section 601 of PL 103-305 after determining that the FAAAA preempted certain portions of the law. Specifically the resolution stated that the PUC could no longer require carriers and subhaulers – defined as "any authorized carrier who renders service for a prime carrier for a specific recompense, for a specific result, under the control of the prime carrier as the result of the work only and not as to the means by which such result is accomplished" - to enter into written agreements and maintain copies of those agreements. The clear import from this historical background should be that any portion of the proposed rulemaking that requires written agreements be created and maintained by authorized carriers engaging the services of a contractor is inconsistent with the FAAAA and would exceed CHP's legislative mandate to promote safety and could potentially, as in this example, interfere.

For instance, California Code of Regulations 1235.7(b)(5)), as proposed, defines 'lease' as:

> *A contract or arrangement in which the owner grants the use of equipment, with or without driver, for a specific period to an authorized carrier for use in the transportation of property for which a Motor Carrier of Property (MCP) permit is required, pursuant to 34620 VC.*

In its current form, this definition conflicts with California Vehicle Code (CVC) section 34620(b), which states 'no motor carrier of property shall contract or subcontract with, or otherwise engage the services of, another motor carrier of property' until they have shown they hold a valid Motor Carrier Permit (MCP) issued by the Department of Motor Vehicles.

This proposal would allow independent contractors, who would otherwise be required to comply with CVC 34620, to contract with authorized carriers without first being vetted for matters of safety and financial security vis-à-vis the process of obtaining a MCP – a non-preempted activity. Conversely, it would require these same contractors and the authorized carriers they engage with to enter into contractual relationships that the PUC has previously deemed subject to pre-emption because they were not adequately related to safety. There is at least a possibility that the proposed rule, while clearly easing the Department's enforcement burden, could actually result in a net decrease of safety."

CHP Response: The concept of the adopted regulations are intended to provide terms by which one authorized motor carrier may sub-contract services with another authorized motor carrier is an ongoing misunderstanding in the motor carrier community. The CHP has tried for several years to clarify the intent with regard to the lease agreements established under the federal rules for interstate motor carriers and the rules previously held by the PUC.

In the past, the PUC allowed for two authorized motor carriers to sub-contract, under certain conditions. One motor carrier would be party to a larger, overlying contract; then, in order to fulfill the terms of that contract, the primary motor carrier would sub-contract that agreement with other motor carriers, albeit authorized in their own right to transport property.

Each motor carrier maintained possession of their own vehicle and operated as themselves under their own operating authority. However, this is not what these regulations authorize. This clear misunderstanding of the intent of the regulations is the very reason the CHP first believed it necessary to adopt federal regulations outright and to adopt similar regulations for intrastate motor carriers.

The regulations do not dictate a sub-contract arrangement between two authorized motor carriers, but rather provide a method by which an authorized motor carrier can lease a vehicle from another person (i.e., individual or motor carrier) and use that vehicle as their own. This arrangement is often used in interstate commerce between an authorized motor carrier who for one reason or another finds it economically advantageous to lease a vehicle rather than purchase a vehicle.

It is imperative this discussion be settled through the regulatory process in order to provide the utmost in transparency and resolve the above misunderstandings through a legitimate process. In order for the CHP to properly identify the actual motor carrier and thereby establish who is immediately responsible for the safe operation of the motor vehicle and the driver associated with that vehicle, it is important to determine the relationship between the parties involved.

Often, a lease arrangement exists between a motor carrier and the lessor; however, the arrangement is explained to the CHP as a "sub-contract" arrangement. The two arrangements are treated very differently. The former leaving the vehicle the responsibility of the motor carrier leasing the vehicle (not the owner of the vehicle) and the latter the vehicle is the responsibility of the sub-contracting motor carrier (most likely, the owner of the vehicle). While the two parties may enter into either agreement, the outcome for responsibility is clearly different. For this reason, these rules are absolutely necessary in the interest of public safety and are by no means a mask for other purposes.

Comment: "The Office of Administrative Law (OAL) asked that the Department explain the necessity of certain provisions of its rulemaking, specifically, sections 1235.1(f), new subsections 1235.2(b)(22) and (c)(10), 1235.7(c) through (f) and 1256(b) and (f) through (h).

In its Modified Statement of Reasons, the Department attempts to explain how these provisions effectuate the purpose of statute, court decisions, or other provisions of law. In some instances,

we believe they have failed to do so.

Among the most specious of these is the following:

Re: 1235.7 (d)(4)

> *Without a clear understanding of the terms of compensation, less business savvy owners are sometimes subject to predatory practices of larger companies with the ability to confuse and manipulate the vehicle owner into a contract where the terms of compensation are unclear and the compensation itself is inadequate to perform the necessary maintenance and to make necessary repairs in order to keep the vehicle in a safe operating condition.*
>
> *While some may argue this type of regulatory action is an attempt to regulate economics, that argument can be refuted by the lack of any requirement for specifics regarding the actual amount of compensation, or the terms by which compensation is determined. The CHP has no interest in the amount of payment, or terms of compensation, only that compensation is clear, permitting the owner to make an informed decision as to the ability to adequately maintain the vehicle and provide necessary maintenance during and after the leasing period.*

This is a purely anecdotal argument, wholly inconsistent with current safety statute, which the Department continually reintroduces in Section by Section Overview 1235.7 subsections parts (d)(4), (6)(7) and (8). California law does not recognize differences in maintenance and safety standards for motor carriers according to levels of 'business savvy', their ability to *correctly* read and interpret the private contracts they willfully enter into or their ability to properly account for its individual maintenance overhead requirements. A vehicle owner is responsible for proper maintenance and safety regardless of its economic status or business acumen.

Moreover, we fail to recognize how this effectuates the purpose of CVC 34501 given that 'clear compensation' is not a predictor of "safe operating condition". There is no guarantee that any hypothetical net compensation gained by the implementation of this rule will be put towards 'necessary maintenance and to make necessary repairs'. This is pure conjecture."

CHP Response: The CHP can never guarantee that any "hypothetical" or even actual compensation will be put towards the maintenance and repair of a vehicle; however, the CHP can surmise, with some degree of sureness, that a clear understanding of the terms of the contract, through adequate disclosure, will go further in assisting the lessor to make a sound business decision. This will ultimately affect the condition of the vehicle being operated, and therefore improve safety.

With this said, the CHP has exercised its authority listed in CVC, Section 34501, to adopt regulations which, through disclosure of certain terms of a lease agreement, enable all parties to maintain the vehicle in safe operating condition. Who is legally responsible for the maintenance of the vehicle (not necessarily the owner, but the motor carrier) and who is contractually

responsible for the maintenance of the vehicle (effecting the actual condition of the vehicle) is wholly within the purview of CVC, Section 34501. It is imperative each party understands their role in the safe operation of the vehicle in question.

Comment: "**Re: 1235.7 (c)**

The Department argues that this section is necessary to "specify general leasing requirements for the purpose of establishing criteria to permit an authorized carrier to use equipment it does not own" and is "intended to specify specific terms for a written lease, the transfer of equipment, and vehicle identification" to ensure "adequate disclosure and create a legal bond". We disagree with this interpretation.

Firstly, while we recognize the Department's authority to make specific provisions of law, we do not agree that their interpretation effectuates the cited statutory authority. While CVC 408 does include persons who lease vehicles found in Section 34500, the Department bases the definition of "lease" entirely on 49 CFR 376, rather than CVC 371 or 372.

In addition, the federal statutory authority on which the Federal Motor Carrier Leasing Regulations (FMCLR) are based (currently, 49 USC § 14102) specifies that the "safety" element of a carrier's obligation for its contractors under a lease arrangement (see 49 USC § 14102(a) (4)) is distinct from the requirement that the parties have an executed lease (see 49 USC § 14102(a)(1)). So, under federal statutory authority, on which the FMCLR were authorized, the written lease requirement of 49 USC § 14102(a)(1) stands apart from the "safety" oversight requirement of 49 USC § 14102(a)(4). Arguably, the leasing regulations, which are derived from the statutory authority of 49 USC § 14102(a)(1), and not 49 USC § 14102(a)(4), have no "safety" element to them. Because the FAAAA specifically reserved for the states those issues genuinely related to safety and not those issues related to written lease requirements, the Department should be preempted from promulgating any regulation related to a carrier's written lease with its contractors.

This would similarly apply to the Department's explanation of necessity for 1235.7 (c)(1)."

CHP Response: The definitions contained in CVC, Sections 100-680, are intended to define aspects of the CVC for which they apply, unless the provision or context otherwise requires. The definitions contained in CVC, Sections 371 and 372, are intended to apply to those business entities whose primary purpose is to lease vehicles, generally noncommercial vehicles (automobiles). The use of the term in these instances are not to prescribe a minimum period so much as to separately define a lease and a rental. This is evidenced by CVC, Section 508, which defines a "renter" as a person renting vehicles for a term not exceeding four months.

As the industry currently exercises the use of lease agreements, ranging from a single day to terms in excess of one year, the CHP is defining the term "lease" within the scope and "context" of the motor carrier industry. To require all lease agreements to exceed a period of four months,

or any other prescribed term, would prove to be overly burdensome and quite possibly fall within

the scope of economic regulation the commenter has identified in the previous comments.

The definition used in 13 CCR, Section 1235.7(b)(5), is reflective of the current practices used by the motor carrier industry. The definition, as adopted, is not intended to prescribe a minimum period of time, but rather, to define the business arrangement where the vehicle owner grants the use of a vehicle to an authorized motor carrier. This definition is consistent with the definition of "motor carrier" listed in CVC, Section 408, whereas the leased vehicle is immediately the responsibility of the lessee (the motor carrier).

Comment: "Re: 1235.7 (c)(3)

To the extent that this specific provision would apply **only to those entities already subject to the lease requirements of 49 CFR 376 and exclusively to date and length a lease is in force**, one could argue a nexus to safety which would circumvent pre-emption."

CHP Response: Title 13CCR, Section 1235.7(c)(3)(A) is specific to intrastate motor carriers and requires the authorized motor carrier operating the vehicle to identify the vehicle as its own. Additionally, subsection (B) requires that the authorized motor carrier carry a statement in the vehicle certifying the vehicle is operated by it, if a copy of the lease is not carried in the vehicle.

These requirements are identical to the requirements contained in 49 CFR, Part 376; however, they apply to intrastate motor carriers in this context, not interstate motor carriers already subject to the requirements of 49 CFR, Part 376.

As for the requirement to identify the vehicle, this requirement has always existed. The change is to permit other names and identification numbers, such as that of the vehicle owner, to remain on the vehicle if certain conditions are met. This will alleviate the burden of constantly applying and removing the name of the owner as lease agreements end or begin.

The requirement to carry a statement in the vehicle certifying the vehicle is operated by the authorized motor carrier, is a new requirement; it is intended to identify who is operating the vehicle should an authorized motor carrier elect to utilize a lease agreement to acquire additional vehicles in order to fulfill their business obligations.

The CHP is unclear as to whether the commenter is arguing in favor of 13 CCR, Section 1235.7(c)(3) or against. For this reason, the sections are simply explained without further response.

Comment: "Re: 1235.7 (d) and (f)

For a number of years authorized carriers operating under the interstate motor carrier safety regulations have been subject to leasing regulations consistent with the regulations proposed by these amendments. However, these rules have been unenforceable by the CHP as those rules were not previously adopted by the state. This adoption will permit the enforcement of specific provisions for intrastate authorized carriers using equipment they do not own. These provisions

are consistent with provisions listed in the federal requirements.

As previously highlighted, *Morales* established that, with respect to preemption, it makes no difference whether a state law is "consistent" or "inconsistent" with federal regulation. Id. at 386-387. Requiring a written lease and regulating the content therein are pre-empted activities.

With this in mind, we do not believe the Department can satisfy Government Code 11349(a)(b) or (d) with regards to these subsections."

CHP Response: As the CHP has already indicated with respect to *Morales v. Trans World Airlines, Inc*., was a matter of questionable advertizing and the affect those advertizing practices had on the rate a customer might pay. However, with respect to public safety, the airline already understood the rate to be charged and what was necessary to maintain their air fleet. The customer, regardless of their understanding of the rate to be paid, played no role in the maintenance of the aircraft. This was purely a matter of a state controlling the rates charged by an air-carrier and therefore should have been preempted.

The CHP, not unlike the FMCSA, is adopting regulations which affect only those parties with direct influence over the maintenance and repair of the vehicles. As indicated several times, the purpose for disclosure has nothing to do with the rate to be charged and everything to do with the maintenance and repair of the vehicles involved; therefore, the decision in *Morales v. Trans World Airlines, Inc*., has nothing to do with the adoption of federal leasing requirements and is not affected by the federal preemption language.

Government Code, Sections 11349(a),(b), and (d), are three of the six standards by which all regulations are adopted and transmitted to the Office of the Secretary of State, for filing. Those standards are as follows:

> *(a) "Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.*
>
> *(b) "Authority" means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation.*
>
> *(d) "Consistency" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.*

The CHP is confident it has demonstrated the standard of "necessity" by thorough explanation of each section to be adopted or amended. Because those explanations already exist elsewhere in this document, the CHP will not restate them here.

As for the standard of "authority," CVC, Section 34501, obligates the CHP to adopt rules and

regulations "that in the judgment of the department, are designed to promote the safe operation of vehicles described in Section 34500." This rulemaking does just that, for reasons already identified elsewhere in this document.

The standard of "consistency" is met by adopting regulations which dovetail into existing regulations. As already indicated, leased vehicles are considered to belong to the motor carrier operating those vehicles. Section 408, CVC, defines a motor carrier as "the registered owner, *lessee*, licensee, or bailee of any vehicle set forth in Section 34500, who operates or directs the operation of any such vehicle on either a for-hire or not-for-hire basis." The regulations adopted through this rulemaking only serve to make this definition more clear.

The practice of leasing a vehicle has a long history in interstate commerce. This is an often used practice in the California port operations. As already indicated, authorized motor carriers will lease vehicles and use those vehicles as their own. In order to ensure consistency with existing federal regulations, the CHP has elected to adopt those regulations outright, rather than to reiterate them in their entirety, creating unnecessary duplication. The adopted federal regulations do not conflict with any existing state regulation; they only serve to enhance the enforcement of existing state laws and rules.

Comment: "**Re: 1236 (a)(1)**

To the extent that this specific provision would apply **only to those entities already subject to the lease requirements of 49 CFR 376 and exclusively to the markings pondered as in this subsection,** one could argue a nexus to safety which would circumvent pre-emption. However, because this would only apply to interstate operators subject to existing laws in 49 CFR 376.11(c), this section may not satisfy the requirements of Government Code 11349(f)."

CHP Response: The CHP is not adopting or amending "Section 1236" and therefore cannot respond to the commenter with regard to this comment.

Comment: "Government Code 11349 (b) defines 'Authority' as 'the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation'.

California Vehicle Code Section 34501 states the Department "shall adopt reasonable rules and regulations that, in the judgment of the department, are designed to promote the safe operation of vehicles described in Section 34500".

While the above language is permissive enough to seemingly grant the Department broad regulatory powers limited solely by their judgment of how a rule or regulation may possibly promote the safe operation of commercial motor vehicles, where such rules and regulation conflict with other provisions of law it behooves the Department to adequately explain a proposal's relationship to safety.

As noted previously, neither CVC 34505.5 nor – more broadly – CVC 34501 permits or obligates

the Department to regulate lease contents on the premise that regulated contracts will lead to better maintenance and repairs by motor carriers."

CHP Response: The CHP will respond directly to CVC, Section 34501, as CVC, Section 34505.5, is not an authoritative section and does not authorize the CHP to do anything. However, CVC, Section 34501, as the commenter indicated, is very broad in scope and obligates the Department to adopt rules and regulations which "in the judgment of the department, are designed to *promote (emphasis added)* the safe operation of vehicles described in Section 34500."

As has been stated from the beginning of this rulemaking process, the purpose and intent of this regulatory action is to provide a consistent identification of motor carriers for both interstate and intrastate operations and to ensure the parties involved have the tools to make an informed decision regarding their ability to safely maintain the vehicle being leased.

The CHP continues to maintain that identification of the motor carrier and vehicle maintenance and repair fall within the scope and legislative intent of CVC, Section 34501. Both identification of the motor carrier and vehicle maintenance and repair are intended to *promote* motor carrier safety and the safe operation of the vehicles listed in CVC, Section 34500.

Comment: "To the modest degree the proposed rulemaking genuinely addresses issues of safety; the CTA supports the Department and its aims. The proposed amendment to 1235.4 (b)(1) is laudable. The Department requires the ability to identify and shut down entities whose operating privileges have been revoked and attempt to resurrect operations under separate CA numbers."

CHP Response: The CHP agrees with the commenter's understanding of the adopted regulation. The CHP has needed the clear ability to delete CA numbers when they are requested and inadvertently issued in order to permit a suspended motor carrier to thwart administrative action taken by the DMV or PUC.

Comment: "Unfortunately, due to the reasons stated above, the California Trucking Association must again oppose the bulk of the Department's Modified Proposed Rulemaking. We do not feel the California Highway Patrol adequately addresses the concerns that the Office of Administrative Law identified in their May 10, 2010 denial of the Department's first adopted proposal.

CTA remains committed to promoting safe motor carrier practices with our agency partners the California Highway Patrol, the Federal Motor Carrier Safety Administration (FMCSA), the Department of Motor Vehicles and Caltrans. We recently conducted a series of Comprehensive Safety Analysis 2010 seminars with the help of the FMCSA throughout the State of California. We have a continuing workshop program covering everything from Controlled Substance Supervisor Training to Hazardous Waste Generator procedures to Biennial Inspection of Terminal compliance. We are active partners in the Department's Safe Transportation Achievement Recognition Program and also conduct our own annual Fleet Safety Awards. CTA

has also recently added a maintenance technician competition to our own Truck Driving Championships, both of which recognize exceptional safety performance, attention to inspection details and technical know-how.

Ensuring the Department can effectively and efficiently utilize its resources to target unsafe vehicles and carriers is of the utmost importance, not only to the CTA, but to the general public at large. We do not believe this proposal adequately achieves this goal. We would like to re-affirm our offer to collaborate with the Department on a solution to their enforcement concerns within the framework of existing state and federal law."

CHP Response: The CHP applauds the CTA for its proactive approach to educating the motor carrier industry with regard to public safety. The CTA has worked cooperatively with the CHP on numerous safety related project, including holding several meetings to discuss the content of this rulemaking. It was as the result of these meetings and the numerous industry interpretations of the application of the federal leasing requirements that the CHP recognized the need for adopting the federal regulations for interstate motor carriers and nearly identical state regulations for intrastate motor carriers in order to allow for consistent application of the federal regulations and to identify each motor carrier by the same set of standards.

Written Comment:
Mr. James Johnson, President
Owner-Operator Independent Drivers Association, Inc.

The Owner-Operator Independent Drivers Association (OOIDA), Inc., provided comments supporting the adoption of the federal leasing requirements and commending the CHP for recognizing the nexus between improving highway safety and the adoption of meaningful leasing regulations. The OOIDA did; however, express its disagreement with the CHP's justifications for omitting certain subsections which were included in the original test of the regulations.

The CHP Accepts the comments by OIDDA into the rulmaking file. Because of the lack of specifics explaining which of the deleted text OIDDA disagreed with and why they disagreed, the CHP is unable to respond the commenter's concerns.

STUDIES/RELATED FACTS

Since publication of the Notice of Proposed Rulemaking, the FMCSA has published the 2009 edition of Title 49, CFR. While no changes were made between the 2007 edition and the 2009 edition, the CHP has amended the text of the regulations to adopt the most current edition, without regulatory affect.

Additionally, for those business entities which have engaged in some sort of vehicle leasing relationship enacted prior to the proposal of these regulations, the CHP would require the terms of these regulations be met no later than June 30, 2011. This should allow adequate time for the very few intrastate motor carrier's currently involved in leasing vehicles for intrastate commerce, to update their contracts (if not already using the federal rules as a business model) and comply

with the adopted regulations.

LOCAL MANDATE

These regulations do not impose any new mandate on local agencies or school districts.

IMPACT ON SMALL BUSINESS

The CHP has not identified any significant impact on small business. This does not represent an additional mandate on motor carriers, but simply provides a method by which an intrastate motor carrier can operate vehicles it does not own. This is not to say a motor carrier who chooses to operate under the provisions of this regulatory process will not incur certain administrative costs; the fact is, a motor carrier who elects to use these provisions would voluntarily subject themselves to the administrative costs associated with certain document preparation and retention requirements required by this rulemaking, but it is important to recognize, this is a business option which does not currently exist. However, an intrastate motor carrier who continues to operate its own vehicles, under the current rules, would be completely unaffected by this proposal. Interstate motor carriers are already subject to the requirements proposed by 13 CCR, Section 1235.7(g). Adoption of the federal rules simply permits the CHP to enforce those rules already included in 49 CFR, Part 376.

ALTERNATIVES

The CHP has not identified any alternative, including the no action alternative, which would be more effective and less burdensome for the purpose for which this action is proposed. Additionally, the CHP has not identified any alternative which would be as effective, and less burdensome to affected persons other that the action being proposed.

Alternative Identified and Reviewed

1. Make no changes to the existing regulations. This alternative would leave intrastate motor carriers without a clear means by which to include leased vehicles, other than those leased through a leasing company, as part of their fleet. While this is not a wide-spread practice among intrastate motor carriers, it is necessary to ensure intrastate motor carriers with the same flexibility as interstate motor carriers. At the same time, the "make no changes" alternative would continue to exacerbate the CHP's current lack of enforcement authority with regard to interstate motor carriers "leasing" vehicles in order to meet various transportation needs.

ECONOMIC IMPACT

The CHP has determined that this new regulation will result in:

- No significant compliance costs for persons or businesses directly affected. Any impact to the transportation industry would be realized through voluntary use of the proposed leasing regulations.

- No discernible adverse impact on the level and distribution of costs and prices for large and small business.

- No impact on the level of employment in the state.